IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.409 OF 2005.

Shantaram Ganpat Mokashi : Appellant.

versus

Jacob Luise Miranda : Respondent.

Mr.K.K.Malphatak for the appellant.

Mr.Manoj Bhatt for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 14th June 2005.

ORAL ORDER

1. Heard the advocates for the appellant and respondent. This appeal arises out of execution proceedings. Respondent is the holder of exparte decree and, the appellant has applied for setting aside the said exparte decree. Without deciding that application, the Court has passed this impugned order, meaning thereby, the court intends to proceed further in execution. In

fact, the court should have decided the application for setting aside exparte decree earlier. The advocate for the respondent informs that the Court has passed an order directing the appellant/original judgment debtor to deposit 50% of the decretal amount as a condition to proceed with that application for setting aside exparte decree. The advocate for the appellant states that within ten weeks from today in any case the appellant will deposit the aforesaid amount. In view of this, this appeal is allowed. The impugned order is set aside. The trial Court will decide the application for setting aside exparte decree first. Till then attachment of the judgment debtor's property to continue. Within ten weeks from today, the appellant to deposit the aforesaid amount before the trial Court. If that is not done, execution to proceed further. Contention of the appellant that decree holder was bound to deposit Rs.25,000/- per month will be considered by the trial Court at the time of deciding the application for setting aside exparte decree.

[D.G.DESHPANDE]

14/06/2005 JUDGE.